

Dec 14, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE G.,

Plaintiff,

No. 4:23-CV-5042-WFN

ORDER

-vs-

KILOLO KIJAKAZI, Acting
Commissioner of Social Security

Defendant.

Jose G. [Plaintiff] brings this action seeking judicial review of the Commissioner of Social Security's final decision denying his application for disability benefits. ECF No. 1. Attorney D. James Tree represents Plaintiff. Special Assistant United States Attorney Ryan Lu represents the Commissioner [Defendant]. After reviewing the administrative record and the briefs filed by the parties, the Court **REVERSES** the Commissioner's final decision.

JURISDICTION

Plaintiff applied for Disability Insurance Benefits on April 14, 2020, alleging disability beginning on October 12, 2019. Tr. 22, 215–16. Plaintiff later amended his alleged onset date to November 30, 2019. Tr. 22, 45. The application was denied initially, Tr. 56–65, and on reconsideration, Tr. 66–78. Administrative Law Judge [ALJ] Jesse Shumway held a hearing on February 15, 2022, Tr. 42–55, and issued an unfavorable decision on February 25, 2022, Tr. 22–29. The Appeals Council denied review on February 10, 2023. Tr. 1–8. The ALJ's February 2022 decision became the Commissioner's final decision, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on April 6, 2023. ECF No. 1.

FACTS

Plaintiff was born in 1963 and was 56 years of age as of his alleged onset date. Tr. 57. He completed seventh grade, Tr. 51, and has past work as a daycare worker and as a truck

1 driver, Tr. 52–54. Plaintiff alleges disability based on back pain, depression, and anxiety.
2 Tr. 47–50.

3 STANDARD OF REVIEW

4 The ALJ is responsible for determining credibility, resolving conflicts in medical
5 testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
6 Cir.1995). The Court reviews the ALJ's legal conclusions *de novo* but gives deference
7 to a reasonable interpretation of a statute the agency is charged with administering.
8 *See McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The ALJ's decision will
9 be reversed only if it is not supported by substantial evidence or if it is based on legal
10 error. *Tackett v. Apfel*, 180 F.3d 1094, 1097–98 (9th Cir. 1999). Substantial evidence is
11 more than a scintilla, but less than a preponderance. *Id.* at 1098. Put another way,
12 "[i]t means such relevant evidence as a reasonable mind might assess as adequate to
13 support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting
14 *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the evidence is susceptible
15 to more than one rational interpretation, the Court may not substitute its judgment for
16 the ALJ's. *Tackett*, 180 F.3d at 1097–98; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169
17 F.3d 595, 599 (9th Cir. 1999). The ALJ's decision is conclusive if it is supported
18 by substantial evidence, even if conflicting evidence supports a finding of either
19 disability or non-disability. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).
20 But a decision supported by substantial evidence will still be set aside if it is based on
21 legal error. *Browner v. Sec'y of Health & Hum. Servs.*, 839 F.2d 432, 433 (9th Cir.
22 1988).

23 SEQUENTIAL EVALUATION PROCESS

24 The Commissioner has established a five-step sequential evaluation process for
25 determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v.*
26 *Yuckert*, 482 U.S. 137, 140–42 (1987). In steps one through four the claimant bears the
27 burden of establishing disability. *Tackett*, 180 F.3d at 1098–99. This burden is met once a
28 claimant establishes that a physical or mental impairment prevents him from engaging in

1 past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot
2 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the
3 Commissioner to show (1) the claimant can make an adjustment to other work; and (2) the
4 claimant can perform specific jobs that exist in the national economy. *Batson v. Comm'r of*
5 *Soc. Sec. Admin.*, 359 F.3d 1190, 1193–94 (9th Cir. 2004). If a claimant cannot make an
6 adjustment to other work in the national economy, he will be found disabled. 20 C.F.R.
7 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

8 ADMINISTRATIVE DECISION

9 On February 25, 2022, the ALJ issued a decision finding Plaintiff was not disabled as
10 defined in the Social Security Act. Tr. 22–29.

11 At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity
12 since the alleged onset date. Tr. 24.

13 At step two, the ALJ determined Plaintiff had the following severe impairments:
14 "obesity and degenerative disc disease of the lumbar spine." *Id.*

15 At step three, the ALJ found Plaintiff did not have an impairment or combination of
16 impairments that met or medically equaled the severity of one of the listed impairments.
17 Tr. 26.

18 The ALJ assessed Plaintiff's Residual Functional Capacity [RFC] and found he can
19 "perform a full range of light work . . . except that he can only occasionally engage in all
20 postural activities." *Id.*

21 At step four, the ALJ found Plaintiff was able to perform past relevant work as a
22 daycare assistant. Tr. 29.

23 At step five, the ALJ made no findings. *See* Tr. 22–29.

24 The ALJ thus concluded Plaintiff was not under a disability within the meaning of the
25 Social Security Act at any time from the alleged onset date. Tr. 29.

26 ISSUES

27 The question presented is whether substantial evidence supports the ALJ's decision
28 denying benefits and, if so, whether the decision is based on proper legal standards.

1 Plaintiff contends the ALJ erred by (1) assessing Plaintiff's RFC without the support
2 of medical opinion evidence, and (2) rejecting Plaintiff's symptom testimony for reasons
3 that were not clear and convincing.

4 DISCUSSION

5 (1) Plaintiff's RFC

6 Plaintiff argues the ALJ erred by assessing Plaintiff's RFC without the support of
7 medical opinion evidence. ECF No. 8 at 5–8.

8 The ALJ did not discuss any medical opinions that supported the RFC. Instead, the
9 ALJ wrote, "the record contains no medical opinions supportive of a finding of a more
10 limited [RFC] than that set forth above." Tr. 28.

11 The ALJ did discuss prior administrative medical findings, but found them
12 unpersuasive. *Id.* State agency medical consultants considered Plaintiff's complaints,
13 including his back pain, and determined that Plaintiff's impairments were nonsevere because
14 they did not cause significant functional limitations. Tr. 62–65, 72–77. Because the
15 consultants found Plaintiff's impairments nonsevere, they did not formulate Plaintiff's RFC.
16 Tr. 64, 76. Although the ALJ found that the prior administrative findings were supported by
17 a narrative explanation, he ultimately concluded the administrative findings were
18 unpersuasive because they were inconsistent with the record as a whole. Tr. 28. Specifically,
19 the ALJ noted the prior administrative medical findings were inconsistent with more recent
20 evidence showing greater levels of limitation than those found by the state agency medical
21 consultants. *Id.* After the consultants made their findings, Plaintiff got a lumbar MRI that
22 showed physical abnormalities. Tr. 647–48. Based on this MRI and other more recent
23 evidence, the ALJ concluded Plaintiff had more limitations than those found by the state
24 agency medical consultants. Tr. 28. And, without support from a medical opinion, the ALJ
25 decided Plaintiff could "perform a full range of light work . . . except that he can only
26 occasionally engage in all postural activities." Tr. 26.

27 The ALJ erred by assessing Plaintiff's RFC based on raw medical evidence without a
28 medical opinion interpreting that raw evidence. *See Day v. Weinberger*, 522 F.2d 1154, 1156

1 (9th Cir. 1975). "The ALJ is responsible for determining credibility, resolving conflicts in
2 medical testimony, and resolving ambiguities." *Edlund v. Massanari*, 253 F.3d 1152, 1156
3 (9th Cir. 2001). However, "as a lay person, an ALJ is simply not qualified to interpret raw
4 medical data in functional terms." *Padilla v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal.
5 2008). No medical opinion or state agency findings in the record supports the ALJ's RFC.
6 *See* Tr. 28. Therefore, the ALJ erred by assessing Plaintiff's RFC without support from
7 medical opinion evidence.

8 Defendant argues the ALJ did not err because the record includes the findings of state
9 agency medical consultants. ECF No. 10 at 10. But, importantly, the state agency consultants
10 did not have the opportunity to review Plaintiff's MRI. Tr. 26. The MRI is in the record, Tr.
11 647–48, and the ALJ concluded the state agency consultant's findings were unpersuasive
12 because they were inconsistent with the MRI and other similar evidence, Tr. 28. The ALJ
13 erred by assessing limitations based on the MRI without a medical opinion to support that
14 assessment.

15 Defendant also argues the ALJ's decision should be affirmed because it was Plaintiff's
16 burden to establish disability. ECF No. 10 at 11. True, it is ultimately Plaintiff's burden to
17 establish disability. *See* 20 C.F.R. § 404.1512(a). It is also Plaintiff's burden to submit all
18 available evidence in support of his disability claim. *Id.* However, it is the ALJ's duty to
19 make every reasonable effort to develop the record, 20 C.F.R. § 404.1512(b)(1), including
20 by ordering consultative examinations as necessary, 20 C.F.R. § 404.1512(b)(2). "Social
21 Security proceedings are inquisitorial rather than adversarial. It is the ALJ's duty to
22 investigate the facts and develop the arguments both for and against granting benefits." *Sims*
23 *v. Apfel*, 530 U.S. 103, 110–11 (2000). The ALJ has this duty "even when the claimant is
24 represented by counsel." *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983).

25 Because the record contained evidence that the ALJ found indicative of greater
26 limitations than those found by state consultants, and no medical opinions interpreting that
27 evidence, the ALJ had a duty to develop the record by obtaining a medical opinion. The case
28 will be remanded for the ALJ to obtain a medical opinion. This does not mean that the ALJ

1 should find Plaintiff is disabled. It simply means that the ALJ's RFC assessment must be
2 supported by medical opinion evidence.

3 Plaintiff asks the Court to remand for an award of benefits, ECF No. 8 at 16, but that
4 remedy is only appropriate if the record leaves no doubt that the claimant is disabled, *see*
5 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1100–01 (9th Cir. 2014). That is
6 not the case here. The Court will remand this matter for additional proceedings and
7 explanation. *See Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004).

8 **(2) Plaintiff's Symptom Testimony**

9 Plaintiff also argues the ALJ erred by rejecting Plaintiff's symptom testimony for
10 reasons that were not clear and convincing. ECF No. 8 at 8–16. The analysis of Plaintiff's
11 symptom testimony could be impacted by the addition of medical opinion evidence.
12 Therefore, the ALJ shall reevaluate Plaintiff's symptom testimony on remand as well.

13 **CONCLUSION**

14 Having reviewed the record and the ALJ's findings, the Court finds the
15 Commissioner's final decision is in error because the ALJ assessed Plaintiff's RFC without
16 support from a medical opinion. The Court has reviewed the briefs and the file and is fully
17 informed Accordingly,

18 **IT IS ORDERED** that:

- 19 1. Plaintiff's Brief, filed July 5, 2023, **ECF No. 8**, is **GRANTED**.
- 20 2. Defendant's Brief, filed August 4, 2023, **ECF No. 10**, is **DENIED**.
- 21 3. This matter is **REMANDED** to the Commissioner for additional proceedings
22 consistent with this Order.
- 23 4. An application for attorney fees may be filed by separate motion.

24 The District Court Executive is directed to file this Order and provide copies to
25 counsel. **Judgment shall be entered for Plaintiff** and the file shall be **CLOSED**.

26 **DATED** this 14th day of December, 2023.

27 

28

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE